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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,192

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Norihisa Hirota

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01/07/2009

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EXAMINER

KASHNIKOW, ERIK

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,192	<b>Applicant(s)</b> HIROTA ET AL.	
	<b>Examiner</b> ERIK KASHNIKOW	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09/26/08.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/30/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "thin-walled" in claim 1 is a relative term which renders the claim indefinite. The term "thin-walled" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collette et al. (US 5,520,877) in view of Nakamaki et al. (EP 0 683 029) Gittner et al. (US 4,177,239) and Sugiura (US 4,641,758).

6. In regards to claim 2 Collette et al. teach a method for a biaxially orientated bottle shaped container (column 6 lines 13-16). Collette et al. teach an initial step of blow molding the preform to a size larger than the final product size (figure 9 and column 9 lines 53-58). Collette et al. then teach heat shrinking the intermediate product (figure 11 and column 10 lines 29-54). Collette et al. then perform a second step of blow molding to obtain the final project (column 10 lines 54-56).

7. While Collette et al. teach an article made by the method from which a biaxially oriented polyester container is formed through a process which comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to the unrestrained bottom during the primary blow molding.

Nakamaki et al. also teach biaxially stretched blow molded containers (paragraph 0001).

8. Nakamaki et al. teach a process wherein the bottom state is not constrained during the primary blow molding step (Figures 2a-2f and paragraph 0061-0065).

9. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. with that of Nakamaki et al. because the method of Collette et al. which offers would benefit from the method of Nakamaki et al. which offers produces a one piece polyester bottle having a bottom with excellent mechanical strength (column 3 lines 23-25).

10. While Collette et al. and Nakamaki et al. teach an article made by the method from which a biaxially oriented polyester container is formed through a process which

comprises the steps of a primary and secondary blow molding, and a primary product larger than the final product they are silent with regards to a uniformly orientated and thin walled bottom.

11. Sugiura teach self standing bottles for holding liquids (column 1 lines 5-10).

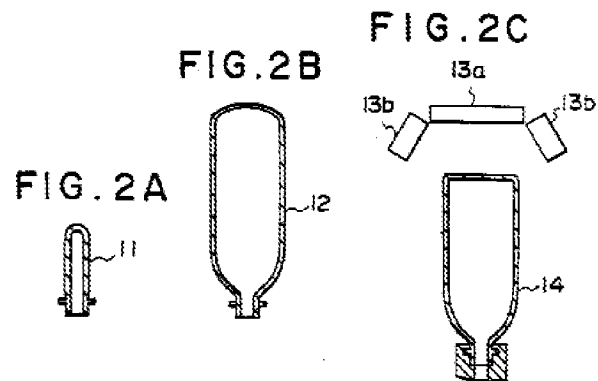
In regards to claim 1 and 2 Sugiura teach containers with thin biaxially orientated bottomed bottles (claim 1). However Sugiura is silent regarding the biaxial orientation being uniform.

Gittner et al. teach that it is know in the art to uniformly orient the bottom of container such as bottles (column 9 lines 50-56).

12. In regards to claim 1, while Collette et al. Nakamaki et al. Gittner et al. and Sugiura

are silent regarding X-ray diffraction values and orientation parameter values, it would be inherent that an article made of the same material in the same way would have the same properties.

13. One of ordinary skill in the art at the time of the invention would be motivated to modify the invention of Collette et al. and Nakamaki et al. with that of Sugiura and Gittner et al because the invention of Sugiura offers good mechanical rigidity (column 1 lines 35-41) whereas the container of Gittner et al. offers a bottom whose quality of characteristics is more inline with the rest of the portions of the bottle (column 3 lines 30-43).



### ***Response to Arguments***

14. Applicant's arguments, see response, filed 09/26/2008, with respect to the 35 U.S.C. 112 2<sup>nd</sup> paragraph have been fully considered and are persuasive. The rejection of claims 1 and 2 due to 112 2<sup>nd</sup> paragraph has been withdrawn.

15. In response to Applicant's arguments the rejection has been amended to include the Sugiura et al. reference which teaches a bottom with thin walls and essentially uniformly biaxially orientated bottoms, which also would strengthen Examiners arguments that the orientation parameter would intrinsically be the same.

### ***Conclusion***

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Erik Kashnikow  
Examiner  
Art Unit 1794

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794